

REMARKS

A. BACKGROUND

Applicants and Applicants' attorney express appreciation to the Examiner for the courtesies extended during the recent interview held on 20 October 2009. The claim amendments and remarks presented herein reflect the substance of the interview. Reconsideration and allowance for the above-identified application are now respectfully requested in view of the foregoing claim amendments and the following remarks.

The present Amendment is in response to the Office Action mailed 15 September 2009. Claims 1, 3, 4, 8-23 and 26-29 were pending and rejected. By this amendment, no claims are canceled, claims 1, 12, 13, 18, 20, and 23 are amended, and no new claims are added. Claims 1, 3, 4, 8-23 and 26-29 are now pending.

The Examiner indicated during the interview that claims reciting natural or artificial flavoring ingredients, sodium chloride, thickening ingredients, and pH adjusting ingredients in the compositions and methods would be favorably considered and likely place the application in condition for allowance. Accordingly, independent claims 1, 13, 18, 20, and 23 were amended to claim the optional inclusion of one or more natural or artificial flavoring ingredients, sodium chloride, one or more thickening ingredients, and citric acid in the compositions and methods. As discussed during the interview, Applicants believe that these amendments are consistent with what is disclosed in the Application and that the amendments should be sufficient to address the enablement rejection presented by the Examiner. That is, natural or artificial flavoring ingredients, sodium chloride, thickening ingredients, and pH adjusting ingredients are discussed in the application as being optionally included in the compositions and methods. Moreover the amendments put a person wishing to practice the invention on notice that ingredients such as natural lemon flavor, NaCl, xanthan gum, and citric acid may be used in the instant invention. In view of this, Applicants submit that claims 1, 13, 18, 20, and 23 and the claims that depend thereon are in allowable condition.

B. REJECTIONS WITHDRAWN

Applicants wish to thank the Examiner for withdrawing the previous rejections with respect to 35 U.S.C. § 112, second paragraph, and under 35 U.S.C. § 103(a) over Su, Fischer, Downton, and Yegerova. In view of the withdrawal of the rejections over the art of record and in

view of the amendments presented herein, Applicants respectfully submit that the presently pending claims are patentable and allowance respectfully requested.

C. CLAIM 12

Claim 12 is listed as "Currently Amended" in the current response to reflect amendments that were made in the previous Office Action response, but were apparently unrecorded due to the inadvertent omission of the appropriate status identifier. The amendments presented herein are intended solely to correct this inadvertent error.

D. REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

The Office Action rejects claims 1, 3-4, 8-23 and 26-29 under 35 U.S.C. § 112, first paragraph. According to the Office Action, "the specification, while being enabling for a dietary supplement comprising each of the following ingredients: (1) noni fruit; (2) Luo Han Guo powder; (3) Luo Han Guo liquid extract; (4) raspberry concentrate and/or (5) blueberry concentrate; (6) natural lemon flavor; (7) xanthan gum; (8) sodium chloride; (9) citric acid and (10) water, does not reasonably provide enablement for a dietary supplement without the recitation of the inclusion of the following four ingredients - (6) natural lemon flavor; (7) xanthan gum; (8) sodium chloride; (9) citric acid." Office Action, pg. 3. Applicants respectfully request withdrawal of the rejections and allowance of the claims in view of the amendments presented herein.

Claims 1, 13, 18, 20, and 23 are amended herein to recite, in part, "optionally including one or more natural or artificial flavoring ingredients, sodium chloride, one or more thickening ingredients, and citric acid." Applicants respectfully submit that these amendments are consistent with what is disclosed in the Application and that the amendments are sufficient to overcome the present rejection.

Under the heading of "Other Ingredients" (Application, paragraphs [0057]-[0060]¹), the Application discusses natural lemon flavor, sodium chloride, xanthan gum, and citric acid in broad, general terms.² Applicants respectfully submit that the present Application clearly and

¹ Paragraph numbers for the present Application referred to herein refer to U.S. Pat. Pub. No. 2004/0137094.

² Natural lemon flavor and xanthan gum grouped into categories that include "natural and artificial flavoring ingredients" (paragraph [0059]) and "thickener[s]" (paragraph [0057]).

unambiguously states that ingredients such as natural lemon flavor, xanthan gum, sodium chloride, and citric acid are preferable (*i.e.*, not critical) components of the compositions and methods claimed herein. For example, the Application states that "natural and artificial flavoring ingredients" (e.g., natural lemon flavoring) "may ... be used" although they are "not required." (paragraph [0059]) Similarly, paragraphs [0057] and [0060] state that each of xanthan gum, sodium chloride, and citric acid are "preferably" included. With respect to citric acid, for example, it is stated that the "supplements will preferably have a pH value that is preferred for fruit juices" and citric acid is merely the example given of an agent that can be added to adjust the pH to a level that is preferred for fruit juices. (paragraph [0060]) And while the Examiner is correct that natural lemon flavor, xanthan gum, sodium chloride, and citric acid are included in the formulations presented in the Examples, it is clearly stated that the "examples are given to illustrate the present invention, and are not intended to limit the scope of the invention." (paragraph [0065])

In view of the amendments and the remarks presented herein, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 112, first paragraph. Reconsideration and allowance of claims 1, 13, 18, 20, and 23 and the claims that depend thereon is respectfully requested.

E. DOUBLE PATENTING

In the Office Action, the Examiner rejects the pending claims under the judicially created doctrine of obviousness-type double patenting in view of U.S. Pat. App. Serial No. 11/173,611. Applicant submits herewith a terminal disclaimer relative to U.S. Pat. App. Serial No. 11/173,611 in order to overcome this rejection. Withdrawal of this rejection and allowance of the pending claims is respectfully requested.

F. CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration of the application and allowance of presently pending claims.

In the event the Examiner finds any remaining impediment to the prompt allowance of this application which could be clarified by a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to **Deposit Account No. 23-3178**: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefore and charge any additional fees that may be required to **Deposit Account No. 23-3178**.

Dated this 21st day of October 2009.

Respectfully submitted,

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